

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 985

Introduced by Assembly Member Torrico

February 18, 2005

An act to ~~add Section 230.5 to the Labor Code~~ *amend Section 394 of the Military and Veterans Code*, relating to labor.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, Torrico. Labor: military duty.

Existing law provides that employers may not discharge or in any manner discriminate against specified employees.

This bill would prohibit an employer discharging or discriminating against an employee for taking time off to perform active military duty as a member of the militia of this state, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 230.5 is added to the Labor Code, to~~
2 ~~read:~~
3 ~~SECTION 1. Section 394 of the Military and Veterans Code is~~
4 ~~amended to read:~~
5 394. (a) No person shall discriminate against any officer,
6 warrant officer or enlisted member of the military or naval forces
7 of the state or of the United States because of that membership.
8 No member of the military forces shall be prejudiced or injured
9 by any person, employer, or officer or agent of any corporation,
10 company, or firm with respect to that member's employment,

1 position or status or be denied or disqualified for employment by
2 virtue of membership or service in the military forces of this state
3 or of the United States.

4 (b) No officer or employee of the state, or of any county, city
5 and county, municipal corporation, or district shall discriminate
6 against any officer, warrant officer or enlisted member of the
7 military or naval forces of the state or of the United States
8 because of that membership. No member of the military forces
9 shall be prejudiced or injured by any officer or employee of the
10 state, or of any county, city and county, municipal corporation, or
11 district with respect to that member's employment, appointment,
12 position or status or be denied or disqualified for or discharged
13 from that employment or position by virtue of membership or
14 service in the military forces of this state or of the United States.

15 (c) No person shall prohibit or refuse entrance to any officer or
16 enlisted member of the Army or Navy of the United States or of
17 the military or naval forces of this state into any public
18 entertainment or place of amusement or into any of the places
19 described in Sections 51 and 52 of the Civil Code because that
20 member wears the uniform of the organization to which he or she
21 belongs.

22 (d) No employer or officer or agent of any corporation,
23 company, or firm, or other person, shall discharge any person
24 from employment because of the performance of any ordered
25 military duty or training or by reason of being an officer, warrant
26 officer, or enlisted member of the military or naval forces of this
27 state, or hinder or prevent that person from performing any
28 military service or from attending any military encampment or
29 place of drill or instruction he or she may be called upon to
30 perform or attend by proper authority; prejudice or harm him or
31 her in any manner in his or her employment, position, or status
32 by reason of performance of military service or duty or
33 attendance at military encampments or places of drill or
34 instruction; or dissuade, prevent, or stop any person from
35 enlistment or accepting a warrant or commission in the California
36 National Guard or Naval Militia by threat or injury to him or her
37 in respect to his or her employment, position, status, trade, or
38 business because of enlistment or acceptance of a warrant or
39 commission.

1 (e) *In addition to any other applicable laws, no employer shall*
2 *discharge or in any manner discriminate against an employee for*
3 *taking time off to perform active military duty as a member of the*
4 *militia of this state prior to January 1, 2011.*

5 (1) *This subdivision shall not apply if the job held by the*
6 *employee upon return from leave no longer exists. However, this*
7 *subdivision shall apply if the reason the job no longer exists is*
8 *that the job was outsourced.*

9 (2) *For purposes of this subdivision, “outsourced” means the*
10 *job was replaced by a job located outside of the United States*
11 *that involves substantially similar duties or activities as the*
12 *replaced job. It shall be presumed that the first jobs outsourced*
13 *were the jobs held by employees described in subdivision (e).*

14 (3) *In addition to any other penalty imposed by law, an*
15 *employer shall pay any employee that is not reinstated upon*
16 *return from active duty an amount equal to six-months salary at*
17 *the rate that was paid immediately preceding the time off.*

18 (4) *Notwithstanding any other law to the contrary, any*
19 *amounts payable to the employee pursuant to the Unemployment*
20 *Insurance Code as a result of not being reinstated shall be*
21 *reduced by the amount of payments received pursuant to*
22 *paragraph (3).*

23 (f) (1) No private employer or officer or agent of any
24 corporation, company, or firm, or other person, shall restrict or
25 terminate any collateral benefit for employees by reason of an
26 employee’s temporary incapacitation incident to duty in the
27 National Guard or Naval Militia. As used in this subdivision,
28 “temporary incapacitation” means any period of incapacitation of
29 52 weeks or less.

30 (2) As used in this subdivision, “benefit” includes, but is not
31 limited to, health care which may be continued at the employee’s
32 expense, life insurance, disability insurance, and seniority status.

33 ~~(f)~~

34 (g) No person who provides lending or financing shall
35 discriminate against any person with respect to the terms of a
36 loan or financing, including, but not limited to, the finance
37 charge, based on that person’s membership in the military or
38 naval forces of this state or of the United States.

39 ~~(g)~~

1 (h) Any person violating this section is guilty of a
2 misdemeanor. In addition, any person violating any of the
3 provisions of this section shall be liable for actual damages and
4 reasonable attorney's fees incurred by the injured party.

5 ~~(h)–~~

6 (i) The remedies provided for in this section are not intended
7 to be exclusive but are in addition to the remedies provided for in
8 other laws, including Sections 51 and 52 of the Civil Code.

9 ~~230.5. (a) No employer shall discharge or in any manner~~
10 ~~discriminate against an employee for taking time off to perform~~
11 ~~active military duty as a member of the militia of this state prior~~
12 ~~to January 1, 2011.~~

13 ~~(b) This section shall not apply if the job held by the employee~~
14 ~~upon return from leave no longer exists. However, this section~~
15 ~~shall apply if the reason the job no longer exists is that the job~~
16 ~~was outsourced.~~

17 ~~(c) For purposes of this section, "outsourced" means the job~~
18 ~~was replaced by a job located outside of the United States that~~
19 ~~involves substantially similar duties or activities as the replaced~~
20 ~~job. It shall be presumed that the first jobs outsourced were the~~
21 ~~jobs held by employees described in subdivision (a).~~

22 ~~(d) In addition to any other penalty imposed by law, an~~
23 ~~employer shall pay any employee that is not reinstated upon~~
24 ~~return from active duty an amount equal to six months salary at~~
25 ~~the rate that was paid immediately preceding the time off.~~

26 ~~(e) Notwithstanding any other law to the contrary, any~~
27 ~~amounts payable to the employee pursuant to the Unemployment~~
28 ~~Insurance Code as a result of not being reinstated shall be~~
29 ~~reduced by the amount of payments received pursuant to~~
30 ~~subdivision (d).~~